VIEW FROM THE MID LATITUDES

Briefing for
Advanced Environmental Law Course Attendees
6 December 1999

Quote of the Day

“The Public is in a Surly Mood.”

Robert S. Taylor
Washington, D.C.
December 2, 1999

PATRIOTISM vs. PERSONAL INTEREST

NIMBYS Rule!

- **Mass Military Reservation**
- **Vieques Range**
- **Public Land Withdrawal**
- **CERCLA reauthorization**
- **Chemical weapons demilitarization**
- **Base Closure**

PATRIOTISM vs. PERSONAL INTEREST

Times will continue to be tough waiting for the next "good" war:

- **military experience in Congress**
- **military experience in overall population**
- **self-interest and good economic times**
- **isolationist attitudes reborn**
- **zero casualties**

HOW TO COPE?

Got to work hard at telling our story:

- **military military training is not incompatible with good environmental stewardship:**
- **How bio-diverse is a Wal-Mart parking lot? (or any other stretch of asphalt?)**
- **How many endangered species live in your condo development? (far fewer than a bombing range)**

HOW TO COPE? (continued)

- **Military needs to train. The battlefield is no place for OJT (Somalia).**
- **Be pro-active (as well as reactive)**
- **Story needs to resonate (easier said than done)**

Substantive topic #1: Waiver of Sovereign Immunity

- **Dodged two bullets this year:**
  - **CERCLA reauthorization**
  - **Clean Water Act**
- **Treat us like everybody else? What a great idea! When do we get to:**
  - **sue EPA over some unlawful policy/ rulemaking?**
  - **Appeal a poorly reasoned EAB decision to a court with real judges?**
  - **Summarily close down operations and move to a friendlier state/country?**

Substantive topic #1: Waiver of Sovereign Immunity

- CERCLA reauthorization
  - WSI Report to Congress Feb 99
    - response to S.8 amendment by Allard/Wyden
  - HR 1300 (Boehlert, T&I)
  - HR 2580 (Commerce)
    - DeGette/Norwood WSI Amendment
- Fed Fac Clean Water Compliance Act
  - S. 669 (Coverdell/Breaux)
  - testimony 13 Oct 99
    - lack of Presidential waiver

Substantive topic #2: Third Party Site Cleanup

- **With no other viable PRPs**
  - **CERCLA sections 120 and 107 create liability**
  - **Judgment Fund inapplicable to pay**
- **Fresno Drum (and clones), Taylor position:**
  - **10 USC 2703 is prospective w/r ERA $$$**
  - **future costs (OK) vs. past costs (NOT)**
- **Past Cost Payment solution:**
  - **New Congressional authorization**
  - **for Fresno = FY00 NDAA Section 326**
    - **cf. CERCLA IAG Stipulated Penalties**